



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/736,191	12/15/2003	Robert A. Rowland III	17090.002001	4366

7590 05/07/2007
Jonathan P. Osha
ROSENTHAL & OSHA L.L.P.
Suite 2800
1221 McKinney
Houston, TX 77010

EXAMINER

GIBSON, ROY DEAN

ART UNIT	PAPER NUMBER
----------	--------------

3739

MAIL DATE	DELIVERY MODE
-----------	---------------

05/07/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/736,191

Applicant(s)

ROWLAND, ROBERT A.

Examiner

Roy D. Gibson

Art Unit

3739

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 February 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-4, 6, 7, 10-14, 19-24 and 26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 19-24 is/are allowed.
- 6) ☐ Claim(s) 2-4, 6, 7, 10, 11, 13, 14 and 26 is/are rejected.
- 7) ☒ Claim(s) 12 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Entry of Amendment

Applicant's amendment filed on Feb. 26, 2007 is acknowledged. Claims 2-4, 6, 7, 10-14, 19-24 and 26 are currently pending.

Prior Rejections or Objections

The following comments pertain to the rejections or objections in the most recent Office action mailed on Oct. 26, 2006. Because new grounds of rejection have been found for previously allowed claims as presented below, this Office action is non-final.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 2, 3, 4, 6 and 7 rejected under 35 U.S.C. 102(b) as being anticipated by Itch Zapper as disclosed by a review by Safe Home Products in 2001 (see enclosed).

The method of use is essentially as claimed, wherein after a suspected insect bite (suspected area of infection), the device is placed over the bite area, and when activated rapidly heats the area to the correct temperature needed to break down the insect protein resulting in an increased level of discomfort, and treatment is terminated if the increased level of discomfort is followed by a gradual decrease in discomfort

Art Unit: 3739

(diminishing of the itching and cooling of the area by natural convection, conduction, etc). The method is repeated if the assessing indicates the infection may still occur.

Note: a similar device known as the Itch Smoother" would also anticipate claims 6 and 7 (see attached release by Safe Home Products).

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 10-11, 13-14 and 26 are rejected under 35 U.S.C. 102(a) as being anticipated by Carl (6,613,044).

Regarding claim 26, Carl discloses an apparatus, comprising:

a heat transfer element (Figure 2, enclosure or cavity # 60) having a surface configured to be positioned in close proximity to a suspected area of infection;

a non-metallic positioning element (30) configured to be grasped by a user; and

a thermal energy source comprising a chemical compound sealed within a cavity substantially disposed within the non-metallic positioning element and in fluid communication with an inner surface of the heat transfer element, for altering a temperature of the surface of the heat transfer element until a predetermined temperature is reached, wherein the predetermined temperature is a temperature that is lower than an initial temperature of the suspected area of infection (col. 3, lines 8-13, col. 5, line 30-col. 6, line 30).

Regarding claims 10-11, 13-14, Carl further discloses wherein the surface of the heat transfer element is configured to a shape of a target area; further comprising a

Art Unit: 3739

temperature detector (# 50 or # 55) with a signal output to the controller (another device); and further comprising an insulating element (col. 6, lines 25-30).

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 10, 11, 13, 14 and 26 are rejected under 35 U.S.C. 102(e) as being anticipated by Alshuler et al. (7,204,832). Regarding claim 26, Alshuler et al. disclose an apparatus, comprising:

a heat transfer element (Figure 10, enclosure or cavity # 1050) having a surface configured to be positioned in close proximity to a suspected area of infection;

a non-metallic positioning element (170) configured to be grasped by a user; and

a thermal energy source comprising a chemical compound sealed within a cavity substantially disposed within the non-metallic positioning element and in fluid communication with an inner surface of the heat transfer element, for altering a temperature of the surface of the heat transfer element until a predetermined temperature is reached, wherein the predetermined temperature is a temperature that is lower than an initial temperature of the suspected area of infection (col. 34, lines 15-24, col. 16, line 62-col. 17, line 19 and col. 38, claim 37).

Regarding claims 10-11, 13-14, Alshuler et al. further disclose wherein the surface of the heat transfer element is configured to a shape of a target area; further

comprising a temperature detector with a signal output to the controller (another device); and further comprising an insulating element (col. 11, line 39-49).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pellegrino et al. (6,736,835). Pellegrino et al. disclose all elements as claimed but, fails to disclose the predetermined temperature is lower than the initial temperature or cooling via endothermic reaction (col. 8, lines 34-65, col. 10, lines 22-43, col. 17, line 60-col. 18, line 46). However, the examiner maintains that it would have been obvious to one of ordinary skill in the art to provide cooling by chemical compounds as an alternative equivalent to heat pipe technology.

Allowable Subject Matter

Claims 19-24 are allowed.

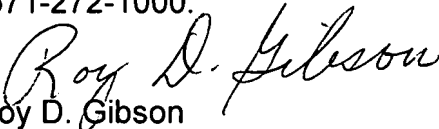
Claim 12 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roy D. Gibson whose telephone number is 571-272-4767. The examiner can normally be reached on Tu-Th, 7:30 am-4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on 571-272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Roy D. Gibson
Primary Examiner
Art Unit 3739

May 2, 2007